REMARKS

Claims 1-5 and 7-9 are now pending in the application. Claim 6 has been canceled. Claims 1, 7, 8 and 9 have been amended. Specifically, Claim 1 has been amended to include the slightly modified limitations of now canceled Claim 6, and Claims 7 and 9 have been substantially rewritten in independent form, with some additional modifications to even further distinguish over the cited art. Claims 1, 7 , 8 and 9

are now independent claims. Reconsideration is respectfully requested.

Claims 1 and 8 were objected to for the informalities noted in paragraph 1 of the Action. Each of these issues has been addressed in the amendments presented herein. Withdrawal of the objection to the claims is therefore respectfully requested.

Claims 1, 3 and 4 were rejected under35 USC 102(e) as being anticipated by US Patent 6,480,551 (Ohishi et al.); Claim 5 was rejected under 35 USC 103(a) as being unpatentable over Ohishi; Claim 2 was rejected as being unpatentable over Ohishi in view of US Patent 6,442,160 (Lindberg); Claims 6 and 7 were rejected as being unpatentable over Ohishi in view of US Patent 5,862,312 (Mann); and Claim 8 was rejected as being unpatentable over Ohishi in view of Mann. In view of the foregoing claim amendments and cancellations, and in view of the following discussion, each of the rejections is respectfully traversed and reconsideration is requested.

The Action takes the position that it would have been obvious to modify Ohishi's system "to include wherein said first headend element includes state information...accessible by said adjacent headend element, as taught by Mann, to ensure uninterrupted output by monitoring and automatically compensating for failed processors in a fault tolerant video distribution system".

Applicants strongly disagree with the presumed "obvious" modification to the teachings of Ohishi to arrive at Applicants' invention as claimed.

Ohishi's device and method specifically notes, and requires, that "when any of the signal processors 72-1 through 72-N fails and the user inputs information about its failure via the operation unit 76, the switch corresponding to the faulty signal processor is switched to the b side thereof so that the signal processor 73 is brought to a state in use in place of the faulty signal processor" (col. 12, line 66 – col. 13, line 4).

First, Applicants submit that Ohishi's device requires the user to "*input information about the failure of the signal processor*" to allow the switch corresponding to the faulty signal processor to be switched to the b side.

Second, it is not necessarily an "adjacent" processor that is brought into the place of the faulty processor, but rather the one "spare" or redundant processor that is used to replace *any and every* faulty processor.

Applicants system and method, as recited in each of amended independent Claim 1, recites that the "adjacent headend element is capable of taking over functioning of said first headend element" and that the "first headend element includes state information for both said first headend element and said adjacent headend element in storage located within said first headend element, said state information accessible by said adjacent headend element".

Similarly, amended independent Claim 7 recites that the "plurality of headend elements are arranged in a row, wherein if one headend element fails, the switching devices shift at least one headend element so that *only* a headend element *adjacent* to the failed headend element takes

over for the failed headend element; and the spare headend element *only* takes over for a headend element adjacent to the spare headend element.

Amended independent Claim 8 recites that "each of the plurality of headend elements includes state information only for itself and its immediately adjacent headend elements".

Ohishi simply fails to teach or even suggest a system or method in which a first headend element includes therein state information as to adjacent headend elements, thereby allowing for the first headend element to automatically take over functioning of each adjacent headend element.

In addition, Ohishi fails to teach or suggest a system in which a spare headend element takes over only for an adjacent headend element. Rather, as recited at col. 13, lines 3-4 of Ohishi, the "faulty signal processor 73 is brought into a state in use in place of the faulty signal processor" (which may or may not be 'adjacent' thereto). In addition, in Mann, the processors are "interconnected through a further communications line, such as an Ethernet bus, so that each processor is aware of the status, and actions, taken by *each other processor*".

For all of the foregoing reasons, each of independent Claims 1, 7 and 8, as amended herein, is believed patentable over any permissible combination of the teachings of Ohishi and Mann, and favorable reconsideration is requested.

Claim 9, now rewritten in independent form recites the step of "refreshing said failed element to serve as a new spare element" – the Office Action takes the position that while both Ohishi and Mann "fail to disclose refreshing said failed element to serve as a new spare element", "in an analogous art, Conforti discloses a data transmission system...containing an active processor and a backup processor...wherein if a fault is found in the active processor the

backup processor becomes active and the previously active processor is then configured to serve as the standby processor". The Action then concludes that it would somehow be "obvious...to modify Ohishi and Mann's systems to include refreshing said failed element to serve as a new spare element...to ensure the limiting of interruptions to the communications system...".

Again, Applicants respectfully traverse the rejection of Claim 9 based on all of Ohishi, Mann and Conforti, and submit that it is, of course, improper to "build" an obviousness rejection when the proposed modification/combination would not in fact have been obvious to one of ordinary skill in the art. Further, it is impermissible to use an Applicants' specification as an instruction manual or "road map" to piece together the teachings of the prior art in order to render claims obvious. The *only* suggestion for modifying the alleged teachings of Ohishi, Mann and Conforti, in the manner suggested in the Action, is found in the luxury of the hindsight accorded one who first viewed Applicants' disclosure, which of course, is not a proper basis for a rejection.

For all of the foregoing reasons, Applicants submit that each of amended independent Claims 1, 7, 8 and 9, are patentable over any permissible combination of the teachings of Ohishi and Mann and favorable reconsideration is respectfully requested.

Each of dependent Claims 2-5 are is believed patentable over the cited art for the same reasons as submitted above with respect to the independent claims from which they respectively depend and as reciting additional patentable limitations.

It is respectfully submitted that in regard to the above amendment and remarks that Claims 1-5 and 7-9, as amended herein, are patentable over the art of record. Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,

Karin L. Williams
Registration No. 36,721

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I hereby certify that this document and any document referenced herein is being deposited with the US Postal Service as first class mail under 37 C.F.R. 1.8 and addressed to Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on July 7, 2004

Karin L. Williams, Reg. No. 36,721
(Printed Name of Person Mailing Correspondence)

(Signature)

Please Continue To Send All Correspondence to:

Mayer, Fortkort & Williams PC
251 North Avenue West, 2nd Floor
Westfield, NJ 07090